

104TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

{ REPORT
104-806 }

RESTORATION OF CERTAIN MISSING
PERSONS AUTHORITIES APPLICABLE TO
DEPARTMENT OF DEFENSE

R E P O R T

OF THE

COMMITTEE ON NATIONAL SECURITY
HOUSE OF REPRESENTATIVES

ON

H.R. 4000

[Including cost estimate of the Congressional Budget Office]



SEPTEMBER 17, 1996.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29-006

WASHINGTON : 1996

HOUSE COMMITTEE ON NATIONAL SECURITY

ONE HUNDRED FOURTH CONGRESS

FLOYD D. SPENCE, South Carolina, *Chairman*

BOB STUMP, Arizona	RONALD V. DELLUMS, California
DUNCAN HUNTER, California	G.V. (SONNY) MONTGOMERY, Mississippi
JOHN R. KASICH, Ohio	PATRICIA SCHROEDER, Colorado
HERBERT H. BATEMAN, Virginia	IKE SKELTON, Missouri
JAMES V. HANSEN, Utah	NORMAN SISISKY, Virginia
CURT WELDON, Pennsylvania	JOHN M. SPRATT, Jr., South Carolina
ROBERT K. DORNAN, California	SOLOMON P. ORTIZ, Texas
JOEL HEFLEY, Colorado	OWEN PICKETT, Virginia
JIM SAXTON, New Jersey	LANE EVANS, Illinois
RANDY "DUKE" CUNNINGHAM, California	JOHN TANNER, Tennessee
STEVE BUYER, Indiana	GLEN BROWDER, Alabama
PETER G. TORKILDSEN, Massachusetts	GENE TAYLOR, Mississippi
TILLIE K. FOWLER, Florida	NEIL ABERCROMBIE, Hawaii
JOHN M. McHUGH, New York	CHET EDWARDS, Texas
JAMES TALENT, Missouri	FRANK TEJEDA, Texas
TERRY EVERETT, Alabama	MARTIN T. MEEHAN, Massachusetts
ROSCOE G. BARTLETT, Maryland	ROBERT A. UNDERWOOD, Guam
HOWARD "BUCK" McKEON, California	JANE HARMAN, California
RON LEWIS, Kentucky	PAUL McHALE, Pennsylvania
J.C. WATTS, JR., Oklahoma	PETE GEREN, Texas
MAC THORNBERRY, Texas	PETE PETERSON, Florida
JOHN N. HOSTETTLER, Indiana	WILLIAM J. JEFFERSON, Louisiana
SAXBY CHAMBLISS, Georgia	ROSA L. DeLAURO, Connecticut
VAN HILLEARY, Tennessee	MIKE WARD, Kentucky
JOE SCARBOROUGH, Florida	PATRICK J. KENNEDY, Rhode Island
WALTER B. JONES, Jr., North Carolina	
JAMES B. LONGLEY, Jr., Maine	
TODD TIAHRT, Kansas	
RICHARD 'DOC' HASTINGS, Washington	

ANDREW K. ELLIS, *Staff Director*

CONTENTS

	Page
Purpose and Background	4
Legislative History	4
Summary of Committee Recommendations	5
Committee Position	6
Fiscal Data	6
Congressional Budget Office Estimate	6
Congressional Budget Office Cost Estimate	6
Committee Cost Estimate	7
Inflation Impact Statement	7
Oversight Findings	7
Statement of Federal Mandates	7
Rollcall Vote	7
Changes in Existing Law Made by the Bill, as Reported	9

RESTORATION OF CERTAIN MISSING PERSONS
AUTHORITIES APPLICABLE TO DEPARTMENT OF DEFENSE

SEPTEMBER 17, 1996.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. SPENCE, from the Committee on National Security,
submitted the following

R E P O R T

[To accompany H.R. 4000]

[Including cost estimate of the Congressional Budget Office]

The Committee on National Security, to whom was referred the bill (H.R. 4000) to amend title 10, United States Code, to restore the provisions of chapter 76 of that title (relating to missing persons) as in effect before the amendments made by the National Defense Authorization Act for Fiscal Year 1997, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. RESTORATION OF MISSING PERSONS AUTHORITIES APPLICABLE TO DEPARTMENT OF DEFENSE AS IN EFFECT BEFORE ENACTMENT OF NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997.

(a) APPLICABILITY TO DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES AND CONTRACTOR EMPLOYEES.—(1) Section 1501 of title 10, United States Code, is amended—

(A) by striking out subsection (c) and inserting in lieu thereof the following:

“(c) COVERED PERSONS.—Section 1502 of this title applies in the case of the following persons:

“(1) Any member of the armed forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.

“(2) Any civilian employee of the Department of Defense, and any employee of a contractor of the Department of Defense, who serves with or accompanies the armed forces in the field under orders who becomes involuntarily absent as

a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.”; and

(B) by adding at the end the following new subsection:

“(f) SECRETARY CONCERNED.—In this chapter, the term ‘Secretary concerned’ includes, in the case of a civilian employee of the Department of Defense or contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the employee or contracting with the contractor, as the case may be.”.

(2) Section 1503(c) of such title is amended—

(A) in paragraph (1), by striking out “one military officer” and inserting in lieu thereof “one individual described in paragraph (2)”;

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(C) by inserting after paragraph (1) the following new paragraph (2):

“(2) An individual referred to in paragraph (1) is the following:

“(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

“(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.”.

(3) Section 1504(d) of such title is amended—

(A) in paragraph (1), by striking out “who are” and all that follows in that paragraph and inserting in lieu thereof “as follows:

“(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

“(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

“(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS-13 of the General Schedule under section 5332 of title 5; and

“(ii) such members of the armed forces as the Secretary considers advisable.

“(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

“(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

“(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board’s inquiry to the number of civilians who are subjects of the board’s inquiry.”; and

(B) in paragraph (4), by striking out “section 1503(c)(3)” and inserting in lieu thereof “section 1503(c)(4)”.

(4) Paragraph (1) of section 1513 of such title is amended to read as follows:

“(1) The term ‘missing person’ means—

“(A) a member of the armed forces on active duty who is in a missing status; or

“(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves with or accompanies the armed forces in the field under orders and who is in a missing status.”.

(b) REPORT ON PRELIMINARY ASSESSMENT OF STATUS.—(1) Section 1502 of such title is amended—

(A) in subsection (a)(2)—

(i) by striking out “10 days” and inserting in lieu thereof “48 hours”; and

(ii) by striking out “Secretary concerned” and inserting in lieu thereof “theater component commander with jurisdiction over the missing person”;

(B) in subsection (a), as amended by subparagraph (A)—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(ii) by inserting “(1)” after “COMMANDER.—”; and

(iii) by adding at the end the following new paragraph:

“(2) However, if the commander determines that operational conditions resulting from hostile action or combat constitute an emergency that prevents timely reporting under paragraph (1)(B), the initial report should be made as soon as possible, but in no case later than ten days after the date on which the commander receives such information under paragraph (1).”;

(C) by redesignating subsection (b) as subsection (c);

(D) by inserting after subsection (a), as amended by subparagraphs (A) and (B), the following new subsection (b):

“(b) TRANSMISSION THROUGH THEATER COMPONENT COMMANDER.—Upon reviewing a report under subsection (a) recommending that a person be placed in a missing status, the theater component commander shall ensure that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person. Not later than 14 days after receiving the report, the theater component commander shall forward the report to the Secretary of Defense or the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title. The theater component commander shall include with such report a certification that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person.”; and

(E) in subsection (c), as redesignated by subparagraph (C), by adding at the end the following new sentence: “The theater component commander through whom the report with respect to the missing person is transmitted under subsection (b) shall ensure that all pertinent information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person is properly safeguarded to avoid loss, damage, or modification.”.

(2) Section 1503(a) of such title is amended by striking out “section 1502(a)” and inserting in lieu thereof “section 1502(b)”.

(3) Section 1504 of such title is amended by striking out “section 1502(a)(2)” in subsections (a), (b), and (c)(1) and inserting in lieu thereof “section 1502(a)”.

(4) Section 1513 of such title is amended by adding at the end the following new paragraph:

“(8) The term ‘theater component commander’ means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.”.

(c) FREQUENCY OF SUBSEQUENT REVIEWS.—Subsection (b) of section 1505 of such title is amended to read as follows:

“(b) FREQUENCY OF SUBSEQUENT REVIEWS.—(1) In the case of a missing person who was last known to be alive or who was last suspected of being alive, the Secretary shall appoint a board to conduct an inquiry with respect to a person under this subsection—

“(A) on or about three years after the date of the initial report of the disappearance of the person under section 1502(a) of this title; and

“(B) not later than every three years thereafter.

“(2) In addition to appointment of boards under paragraph (1), the Secretary shall appoint a board to conduct an inquiry with respect to a missing person under this subsection upon receipt of information that could result in a change of status of the missing person. When the Secretary appoints a board under this paragraph, the time for subsequent appointments of a board under paragraph (1)(B) shall be determined from the date of the receipt of such information.

“(3) The Secretary is not required to appoint a board under paragraph (1) with respect to the disappearance of any person—

“(A) more than 30 years after the initial report of the disappearance of the missing person required by section 1502(a) of this title; or

“(B) if, before the end of such 30-year period, the missing person is accounted for.”.

(d) PENALTIES FOR WRONGFUL WITHHOLDING OF INFORMATION.—Section 1506 of such title is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

“(e) WRONGFUL WITHHOLDING.—Except as provided in subsections (a) through (d), any person who knowingly and willfully withholds from the personnel file of a missing person any information relating to the disappearance or whereabouts and status of a missing person shall be fined as provided in title 18 or imprisoned not more than one year, or both.”.

(e) INFORMATION TO ACCOMPANY RECOMMENDATION OF STATUS OF DEATH.—Section 1507(b) of such title is amended adding at the end the following new paragraphs:

“(3) A description of the location of the body, if recovered.

“(4) If the body has been recovered and is not identifiable through visual means, a certification by a practitioner of an appropriate forensic science that the body recovered is that of the missing person.”.

(f) SCOPE OF PREENACTMENT REVIEW.—(1) Section 1509 of such title is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection (c):

“(c) SPECIAL RULE FOR PERSONS CLASSIFIED AS ‘KIA/BNR’.—In the case of a person described in subsection (b) who was classified as ‘killed in action/body not recovered’, the case of that person may be reviewed under this section only if the new information referred to in subsection (a) is compelling.”.

(2)(A) The heading of such section is amended by inserting “, **special interest**” after “**Preenactment**”.

(B) The item relating to such section in the table of sections at the beginning of chapter 76 of such title is amended by inserting “, **special interest**” after “**Preenactment**”.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect immediately after the enactment of the National Defense Authorization Act for Fiscal Year 1997.

PURPOSE AND BACKGROUND

H.R. 4000 would restore provisions of Chapter 76 of title 10, United States Code (relating to American prisoners of war and missing in action), that were in effect before amendment by the National Defense Authorization Act for Fiscal Year 1997 (section 578 in House Report 104–724).

Chapter 76 of title 10, United States Code, was created by the National Defense Authorization Act for Fiscal Year 1996 (section 569 of Public Law 104–106). The principal purpose of the legislation was “to ensure that any member of the Armed Forces (and any Department of Defense civilian employee or contractor employee who serves with or accompanies the Armed Forces in the field under orders) who becomes missing or unaccounted for is ultimately accounted for by the United States, and, as a general rule, is not declared dead solely because of the passage of time.”

The President’s legislative proposal fiscal year 1997 sought the repeal or modification of nine major provisions of Chapter 76. The Senate adopted those repeals and modifications in its version of the National Defense Authorization Act for Fiscal Year 1997 (section 537 of S. 1745; see also Senate Report 104–267). The conference report on H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997, incorporated the majority of changes made by the Senate. H.R. 4000 would reinstate the provisions repealed or modified by the National Defense Authorization Act for Fiscal Year 1997.

LEGISLATIVE HISTORY

H.R. 4000 was introduced on August 2, 1996, by Representative Robert K. Dornan and 264 cosponsors. The bill was referred to the Committee on National Security.

On September 10, 1996, the Subcommittee on Military Personnel held a hearing on H.R. 4000 and heard testimony in support of the bill from Representatives Benjamin A. Gilman, Sam Johnson and Ron Packard, as well as from Michael D. Bengé, former government civilian employee and Vietnam-era prisoner of war, Larry Stark, former U.S. Navy civilian contractor employee and Vietnam-era prisoner of war, Carol Hrdlicka, wife of Col. David Hrdlicka,

USAF, Vietnam-era prisoner of war, Donna Downes Knox, legal counsel and member of the board of directors, Korean/Cold War Family Association of the Missing, and J. Thomas Burch, Jr., president, National Vietnam Veterans Coalition.

On September 12, 1996, the Committee on National Security met to consider H.R. 4000. The committee agreed to an amendment in the nature of a substitute that would make minor technical changes to the introduced bill. H.R. 4000, as amended, was ordered reported favorably to the House by a vote of 45 to 0.

SUMMARY OF COMMITTEE RECOMMENDATIONS

H.R. 4000, as amended by the House National Security Committee, would:

Reapply Chapter 76 of title 10, United States Code, to Department of Defense civilians and contractors accompanying armed forces in the field. The conference agreement on H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997, would limit the scope of the law solely to military personnel;

Reestablish a 48-hour time period within which a field commander's initial report of a missing person's status must be made. However, in the event of an emergency situation due to hostile action or combat, a commander could delay that initial report up to 10 days. The conference report on H.R. 3230 would establish a 10-day time frame for all such reports, regardless of operational circumstances;

Restore the requirement for the theater component commander to review a field commander's initial assessment of a missing person's status and to assess the adequacy of actions being taken to resolve the missing person's status. The conference report on H.R. 3230 would eliminate the involvement of the theater component commander;

Restore the requirement that the status of persons who were last known alive be reviewed every three years for 30 years following the initial report that such persons were missing. The conference report on H.R. 3230 would direct the appropriate service secretary to conduct a review only when new information that may change the missing person's status is received;

Restore the authority to assess criminal penalties for the knowing and willful withholding of information from a missing person's file. The conference report on H.R. 3230 would eliminate this authority;

Restore the requirement that a Department of Defense status review board (when making determinations of death) provide a description of the location of body, if recovered, and (if the body is unidentifiable), a certification by "a practitioner of an appropriate forensic science that the body recovered is that of the missing person." The conference report on H.R. 3230 would eliminate both these requirements; and

Restore the authority to request a status review of Korean conflict cases involving a person who was killed in action, but whose body was not recovered, when new, "compelling" information is received. The conference report on H.R. 3230 would eliminate this provision.

COMMITTEE POSITION

On September 12, 1996, the Committee on National Security, a quorum being present, approved H.R. 4000, as amended, by a vote of 45 to 0.

FISCAL DATA

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the committee attempted to ascertain annual outlays resulting from the bill during fiscal year 1997 and the four following fiscal years. The results of such efforts are reflected in the cost estimate prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974, which is included in this report pursuant to clause 2(l)(3)(C) of House rule XI.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 403(a) of the Congressional Budget Act of 1974 is as follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

SEPTEMBER 16, 1996.

Hon. FLOYD SPENCE,
Chairman, Committee on National Security,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4000, as ordered reported by the House Committee on National Security on September 12, 1996. CBO estimates that enactment of the bill would not significantly affect the budget of the federal government.

The bill would repeal provisions of H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997, which has been cleared for the President's signature but has not yet been signed into law. Section 578 of H.R. 3230 would prohibit fines on persons who withhold information from the files of missing personnel of the Department of Defense (DoD) and would change DoD administrative procedures when military and civilian personnel are missing. H.R. 4000 would impose the fines and would overturn many other changes contained in section 578.

Imposing criminal fines would cause governmental receipts to increase, but CBO estimates that any such increase would be less than \$500,000 annually. These receipts would be deposited in the Crime Victims Trust Fund and would be spent in the following year; thus direct spending from the fund would match the increase in receipts from the fines with a one year lag. CBO estimates that the other provisions in H.R. 4000 would have no significant budgetary impact.

H.R. 4000 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) and would have no effect on the budgets of state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kent Christensen.

Sincerely,

JUNE E. O'NEILL, *Director*.

COMMITTEE COST ESTIMATE

Pursuant to clause 7(a) of rule XIII of the Rules of the House of Representatives, the committee generally concurs with the estimate as contained in the report of the Congressional Budget Office.

INFLATION IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee concludes that the bill would have no significant inflationary impact.

OVERSIGHT FINDINGS

With respect to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, this legislation results from hearings and other oversight activities conducted by the committee pursuant to clause 2(b)(1) of rule X.

With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures. The fiscal features of this legislation are addressed in the estimate prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Reform and Oversight pertaining to the subject matter of H.R. 4000.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104–4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill would provide no unfunded federal intergovernmental mandates.

ROLLCALL VOTE

In accordance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, a rollcall vote was taken with respect to the committee's consideration of H.R. 4000. The record of this vote is attached to this report.

The committee ordered H.R. 4000 reported to the House with a favorable recommendation by a vote of 45 to 0, a quorum being present.

**COMMITTEE ON NATIONAL SECURITY
104TH CONGRESS
ROLL CALL**

Final Passage of HR 4000

Date: 09/12/96

Voice Vote Ayes Nays

Rep.	Aye	Nay	Present	Rep.	Aye	Nay	Present
Mr. Spence	X			Mr. Dellums	X		
Mr. Stump	X			Mr. Montgomery	X		
Mr. Hunter	X			Mrs. Schroeder			
Mr. Kasich	X			Mr. Skelton	X		
Mr. Bateman	X			Mr. Sisisky	X		
Mr. Hansen	X			Mr. Spratt	X		
Mr. Weldon				Mr. Ortiz	X		
Mr. Dornan	X			Mr. Pickett	X		
Mr. Hefley	X			Mr. Evans	X		
Mr. Saxton				Mr. Tanner	X		
Mr. Cunningham	X			Mr. Browder	X		
Mr. Buyer	X			Mr. Taylor	X		
Mr. Torkildsen				Mr. Abercrombie			
Mrs. Fowler	X			Mr. Edwards	X		
Mr. McHugh	X			Mr. Tejada	X		
Mr. Talent	X			Mr. Meehan	X		
Mr. Everett	X			Mr. Underwood	X		
Mr. Bartlett	X			Ms. Harman	X		
Mr. McKeon	X			Mr. McHale	X		
Mr. Lewis	X			Mr. Geren	X		
Mr. Watts				Mr. Peterson	X		
Mr. Thornberry				Mr. Jefferson			
Mr. Hostettler	X			Ms. DeLauro			
Mr. Chambliss	X			Mr. Ward	X		
Mr. Hilleary	X			Mr. Kennedy	X		
Mr. Scarborough	X						
Mr. Jones							
Mr. Longley	X						
Mr. Tiahrt	X						
Mr. Hastings	X						

Roll Call Vote Total 45 Aye 0 Nay Present

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NOTE: Existing law as shown herein incorporates the amendments to chapter 76 of title 10, United States Code, made by section 578 of H.R. 3230 of the 104th Congress, the National Defense Authorization Act for Fiscal Year 1997. The conference report for that measure was agreed to by the House of Representatives on August 1, 1996, and by the Senate on September 10, 1996, but that measure had not been enacted as of the filing of this report.

CHAPTER 76 OF TITLE 10, UNITED STATES CODE

CHAPTER 76—MISSING PERSONS

Sec.

1501. System for accounting for missing persons.

* * * * *

1509. Preenactment, *special interest* cases.

* * * * *

§ 1501. System for accounting for missing persons

(a) * * *

* * * * *

[(c) COVERED PERSONS.—Section 1502 of this title applies in the case of any member of the armed forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.]

(c) COVERED PERSONS.—Section 1502 of this title applies in the case of the following persons:

(1) Any member of the armed forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.

(2) Any civilian employee of the Department of Defense, and any employee of a contractor of the Department of Defense, who serves with or accompanies the armed forces in the field under orders who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.

* * * * *

(f) SECRETARY CONCERNED.—In this chapter, the term “Secretary concerned” includes, in the case of a civilian employee of the Department of Defense or contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the employee or contracting with the contractor, as the case may be.

§ 1502. Missing persons: initial report

(a) PRELIMINARY ASSESSMENT AND RECOMMENDATION BY COMMANDER.—(1) After receiving information that the whereabouts and status of a person described in section 1501(c) of this title is uncertain and that the absence of the person may be involuntary, the commander of the unit, facility, or area to or in which the person is assigned shall make a preliminary assessment of the circumstances. If, as a result of that assessment, the commander concludes that the person is missing, the commander shall—

[(1)] (A) recommend that the person be placed in a missing status; and

[(2)] (B) not later than [10 days] 48 hours after receiving such information, transmit a report containing that recommendation to the [Secretary concerned] theater component commander with jurisdiction over the missing person in accordance with procedures prescribed under section 1501(b) of this title.

(2) *However, if the commander determines that operational conditions resulting from hostile action or combat constitute an emergency that prevents timely reporting under paragraph (1)(B), the initial report should be made as soon as possible, but in no case later than ten days after the date on which the commander receives such information under paragraph (1).*

(b) TRANSMISSION THROUGH THEATER COMPONENT COMMANDER.—Upon reviewing a report under subsection (a) recommending that a person be placed in a missing status, the theater component commander shall ensure that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person. Not later than 14 days after receiving the report, the theater component commander shall forward the report to the Secretary of Defense or the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title. The theater component commander shall include with such report a certification that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person.

[(b)] (c) SAFEGUARDING AND FORWARDING OF RECORDS.—A commander making a preliminary assessment under subsection (a) with respect to a missing person shall (in accordance with procedures prescribed under section 1501 of this title) safeguard and forward for official use any information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person. *The theater component commander through whom the report with respect to the missing person is transmitted under subsection (b) shall ensure that all pertinent information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person is properly safeguarded to avoid loss, damage, or modification.*

§ 1503. Actions of Secretary concerned; initial board inquiry

(a) DETERMINATION BY SECRETARY.—Upon receiving a recommendation under section 1502[(a)] (b) of this title that a person be placed in a missing status, the Secretary receiving the rec-

ommendation shall review the recommendation and, not later than 10 days after receiving such recommendation, shall appoint a board under this section to conduct an inquiry into the whereabouts and status of the person.

* * * * *

(c) COMPOSITION.—(1) A board appointed under this section to inquire into the whereabouts and status of a person shall consist of at least ~~one military officer~~ *one individual described in paragraph (2)* who has experience with and understanding of military operations or activities similar to the operation or activity in which the person disappeared.

(2) *An individual referred to in paragraph (1) is the following:*

(A) *A military officer, in the case of an inquiry with respect to a member of the armed forces.*

(B) *A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.*

~~[(2)]~~ (3) An individual may be appointed as a member of a board under this section only if the individual has a security clearance that affords the individual access to all information relating to the whereabouts and status of the missing persons covered by the inquiry.

~~[(3)]~~ (4) A Secretary appointing a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

§ 1504. Subsequent board of inquiry

(a) ADDITIONAL BOARD.—If information that may result in a change of status of a person covered by a determination under section 1503(i) of this title becomes available within one year after the date of the transmission of a report with respect to the person under section 1502(a)~~[(2)]~~ of this title, the Secretary concerned shall appoint a board under this section to conduct an inquiry into the information.

(b) DATE OF APPOINTMENT.—The Secretary concerned shall appoint a board under this section to conduct an inquiry into the whereabouts and status of a missing person on or about one year after the date of the transmission of a report concerning the person under section 1502(a)~~[(2)]~~ of this title.

* * * * *

(d) COMPOSITION.—(1) A board appointed under this section shall be composed of at least three members ~~who are officers having the grade of major or lieutenant commander or above.~~ *as follows:*

(A) *In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.*

(B) *In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the De-*

partment of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS-13 of the General Schedule under section 5332 of title 5; and

(ii) such members of the armed forces as the Secretary considers advisable.

(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.

(2) The Secretary concerned shall designate one member of a board appointed under this section as president of the board. The president of the board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the inquiry.

(3) One member of each board appointed under this subsection shall be an individual who—

(A) has an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

(B) has an understanding of and expertise in the type of official activities that one or more such persons were engaged in at the time such person or persons disappeared.

(4) The Secretary who appoints a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, with the same qualifications as specified in section 1503(c)(3)(4) of this title.

(e) DUTIES OF BOARD.—A board appointed under this section to conduct an inquiry into the whereabouts and status of a person shall—

(1) review the reports with respect to the person transmitted under section 1502(a)(2) of this title and submitted under section 1503(h) of this title;

* * * * *

§ 1505. Further review

(a) * * *

[(b) FREQUENCY OF SUBSEQUENT REVIEWS.—The Secretary concerned shall conduct inquiries into the whereabouts and status of a person under subsection (a) upon receipt of information that may result in a change of status of the person. The Secretary concerned shall appoint a board to conduct such inquiries.]

(b) *FREQUENCY OF SUBSEQUENT REVIEWS.*—(1) *In the case of a missing person who was last known to be alive or who was last suspected of being alive, the Secretary shall appoint a board to conduct an inquiry with respect to a person under this subsection—*

(A) *on or about three years after the date of the initial report of the disappearance of the person under section 1502(a) of this title; and*

(B) *not later than every three years thereafter.*

(2) *In addition to appointment of boards under paragraph (1), the Secretary shall appoint a board to conduct an inquiry with respect to a missing person under this subsection upon receipt of information that could result in a change of status of the missing person. When the Secretary appoints a board under this paragraph, the time for subsequent appointments of a board under paragraph (1)(B) shall be determined from the date of the receipt of such information.*

(3) *The Secretary is not required to appoint a board under paragraph (1) with respect to the disappearance of any person—*

(A) *more than 30 years after the initial report of the disappearance of the missing person required by section 1502(a) of this title; or*

(B) *if, before the end of such 30-year period, the missing person is accounted for.*

* * * * *

§ 1506. Personnel files

(a) * * *

* * * * *

(e) *WRONGFUL WITHHOLDING.*—*Except as provided in subsections (a) through (d), any person who knowingly and willfully withholds from the personnel file of a missing person any information relating to the disappearance or whereabouts and status of a missing person shall be fined as provided in title 18 or imprisoned not more than one year, or both.*

[(e)] (f) *AVAILABILITY OF INFORMATION.*—*The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to the primary next of kin, the other members of the immediate family, or any other previously designated person of the person.*

§ 1507. Recommendation of status of death

(a) * * *

(b) *SUBMITTAL OF INFORMATION ON DEATH.*—*If a board appointed under section 1503, 1504, or 1505 of this title makes a recommendation that a missing person be declared dead, the board shall include in the report of the board with respect to the person under that section the following:*

(1) *A detailed description of the location where the death occurred.*

(2) *A statement of the date on which the death occurred.*

(3) *A description of the location of the body, if recovered.*

(4) *If the body has been recovered and is not identifiable through visual means, a certification by a practitioner of an ap-*

propriate forensic science that the body recovered is that of the missing person.

* * * * *

§ 1509. Preenactment, *special interest* cases

(a) * * *

* * * * *

(c) *SPECIAL RULE FOR PERSONS CLASSIFIED AS “KIA/BNR”.*—*In the case of a person described in subsection (b) who was classified as “killed in action/body not recovered”, the case of that person may be reviewed under this section only if the new information referred to in subsection (a) is compelling.*

[(c)] (d) *DEFINITIONS.*—*In this section:*

- (1) The term “Korean conflict” means the period beginning on June 27, 1950, and ending on January 31, 1955.
- (2) The term “Cold War” means the period beginning on September 2, 1945, and ending on August 21, 1991.
- (3) The term “Indochina war era” means the period beginning on July 8, 1959, and ending on May 15, 1975.

* * * * *

§ 1513. Definitions

In this chapter:

[(1)] (1) The term “missing person” means a member of the armed forces on active duty who is in a missing status.】

(1) *The term “missing person” means—*

(A) a member of the armed forces on active duty who is in a missing status; or

(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves with or accompanies the armed forces in the field under orders and who is in a missing status.

* * * * *

(8) *The term “theater component commander” means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.*